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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,240	09/25/2003	Brian J. Tearoe	97-2497	8140

7590 10/26/2004

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,240

Applicant(s)TEAROE, BRIAN J. **Examiner**

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-20 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,604,320 to Hsia in view of U.S. Patent No. 6,487,977 to Williams et al.

Regarding Claim 1, Hsia teaches a vegetation support with an elongated pole (Hsia #12) having top and bottom ends with a longitudinal axis extending between the top and bottom ends and the bottom having an opening into the interior of the pole (Hsia Fig. 5 illustrates that the pole is hollow);

Hsia teaches the pole having alternating first and second sets of bores therethrough (Hsia Fig. 5 #16), the bores of the first set of bores extending in a first direction, the bores of the second set of bores being in a second direction;

Hsia teaches a plurality of elongate dowels (Hsia #15), each dowel having opposite first and second ends, and a length defined between the first and second ends of the dowel, each dowel being inserted through an associated bore of the pole;

Hsia is silent on the slots and the auger member. However, Williams teaches a vertical support with elongated slots; and an auger member having a top turning portion and a bottom corkscrew portion being inserted into the ground surface, the turning

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portion having a generally T-shaped handle (Williams Fig. 2 #16 and #14) the turning portion of the auger member being inserted into the opening at the bottom of the pole and the arms of the handle being inserted into an associated slot. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of an alternate equivalent old and well-known ground anchoring means to secure the vertical pole in place and to prevent any undesirable movement such as in a storm with strong winds.

Regarding Claim 3, Hsia teaches that the bores extend substantially perpendicular to the longitudinal axis of the pole, where the bores of the first set of bores are extended substantially perpendicular to the bores of the second set of bores (Hsia Fig. 5 #16).

Regarding Claim 4, Hsia teaches the bores of the first set of bores are generally equidistantly spaced apart from the adjacent bores of the first set of bores (Hsia Fig. 5 #16).

Regarding Claim 5, Hsia teaches the bores of the second set of bores are generally equidistantly spaced apart from bores of the second set of bores (Hsia Fig. 5 #16).

Regarding Claims 6 and 7, Hsia is silent on the pole length, the pole diameter, the distance between bores, and the length of the dowels. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Hsia at the time of the invention since the modification is merely a change in size to accommodate different sizes of vegetation and does not present a patentably distinct limitation.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,604,320 to Hsia and U.S. Patent No. 6,487,977 to Williams et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,386,491 to Bissett.

Regarding Claim 2, Hsia as modified teaches the top has an opening into the interior, but is silent a cap inserted into the opening. However, Bissett teaches a cap inserted into an opening of a pole (Bissett Fig. 4 #20). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an aesthetic design choice to enhance the decorative appearance of the pole and does not present a patentably distinct limitation.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,604,320 to Hsia and U.S. Patent No. 6,487,977 to Williams et al. as applied to claim 1 above, and further in view of U.S. Patent No. 836,321 to Hill.

Regarding Claim 8, Hsia as modified is silent on the dowels being tapered. However, Hill teaches a support structure with the dowels having a taper (Hill Fig. 1 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention for easier insertion into a dense piece of vegetation.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,604,320 to Hsia and U.S. Patent No. 6,487,977 to Williams et al. as applied to claim 1 above, and further in view U.S. Patent No. 2,990,647 to Himebaugh.

Regarding Claim 9, Hsia as modified is silent on each of the dowels having an annular stop positioned between the first and second ends of the dowel and the annular stops abut the pole. However, Himebaugh teaches a vegetation support structure with annular dowels (Himebaugh Fig. 3 #21). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to securely hold the dowels in place to prevent any undesirable movement that could cause damage to the supported vegetation.

Allowable Subject Matter

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-20 are allowed.

The following is an examiner's statement of reasons for allowance:

Cited references U.S. Patent No. 6,487,977; U.S. Patent No. 6,386,491; U.S. Patent No. 6,604,320; U.S. Patent No. 2,990,647; U.S. Patent No. 836,321; United Kingdom Patent GB 2187770; French Patent FR 2624896; U.S. Patent No. 1,902,663; U.S. Patent No. 728,609; U.S. Patent no. 3,318,560; U.S. Patent No. 6,702,239; U.S. Patent No. 23,741; U.S. Patent No. 670,144; U.S. Patent No. 2,441,109; U.S. Patent No. 5,098,057; U.S. Patent No. 5,735,494; U.S. Patent No. 4,887,385; U.S. Patent No. 4,738,062; U.S. Patent No. 3,204,770 teach a vegetation support with an elongated pole having top and bottom ends with a longitudinal axis extending between the top and bottom ends and the bottom having an opening into the interior of the pole;

the pole having alternating first and second sets of bores therethrough, the bores of the first set of bores extending in a first direction, the bores of the second set of bores being in a second direction;

a plurality of elongate dowels, each dowel having opposite first and second ends, and a length defined between the first and second ends of the dowel, each dowel being inserted through an associated bore of the pole;

a vertical support with elongated slots; and an auger member having a top turning portion and a bottom corkscrew portion being inserted into the ground surface, the turning portion having a generally T-shaped handle, the turning portion of the auger member being inserted into the opening at the bottom of the pole and the arms of the handle being inserted into an associated slot;

a cap inserted into the top of the pole; the bores extend substantially perpendicular to the longitudinal axis; the bores are equidistantly spaced; the dimensions of the pole, bores, and dowels; the dowels are tapered; and an annular stop.

The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination a pair of diametrically opposed elongated slots, the length of the slots extending from the bottom end of the pole towards the top end of the pole, substantially parallel to the longitudinal axis, each slot having a locking notch; and the handle of the auger may be inserted into the locking notch of the slot.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments filed 12 August 2004 have been fully considered but they are not persuasive.

Examiner maintains that the modification of the teachings of Hsia with the teachings of Williams is an obvious and proper modification for one of ordinary skill in the art. Applicant has argued that such modification would change the principle of operation of Hsia. However, Hsia's main objective is to provide a device for solving the problem of providing support to overloaded tree branches or vines that is movable, easily assembled, easily disassembled, and enables the branches to swing with the wind. Selection of an alternate equivalent old and well-known ground anchoring means to secure the vertical pole in place and to prevent any undesirable movement of the overall structure is an obvious modification that does not change the principle operation of Hsia. Even if one of ordinary skill in the art selected the ground anchoring means of Williams, the support apparatus of Hsia would still continue to function as a branch support device that is movable, easily assembled, easily disassembled, and enables the branches to swing with the wind. Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

21 October 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

10/22/04